

koji mold, adding water to bring the moisture content to levels as to enable proliferation of koji mold and fermentation of grains until phytic acid is sufficiently reduced or removed and some beneficial microorganisms are reasonably expected to be present.

In reply thereto, while the Examiner may believe that inherently the process of Japanese '725 produces the identical product with at least beneficial microorganisms, Applicant respectfully submits that there is no teaching in Japanese '725 that this is the case and particularly no teaching that these beneficial microorganisms would help to sustain the health of living beings. Also, Applicant respectfully submits that Japanese '725 does not teach that the amount of water added would be at most 50% by weight.

In view of the above, Applicant respectfully submits that Japanese '725 does not teach each and every element of Applicant's invention. Therefore, Applicant respectfully submits that claims 1, 3, 5 and 6 are not anticipated by Japanese patent publication 7-23725.

The Examiner has rejected claims 1 and 3-8 under 35 U.S.C. 102 as being anticipated by U.S. Patent No. 4,308,284 in view of Japanese patent publication 7-23725. Applicant respectfully submits that this rejection cannot be a rejection under 35 U.S.C. 102 since the teachings of two different patents or publications are being combined. Therefore, Applicant respectfully submits that this rejection is in fact an obviousness rejection under 35 U.S.C. 103 and will treat it as such below.

In support of his rejection, the Examiner states that U.S. Patent No. 4,308,284 clearly teaches a process and a product obtained by the process comprising steps of inoculating grains with koji mold, adding water and adding beneficial microorganisms such as yeasts of lactobacilli and the step of removing a phytic acid contained in the grains is inherently present in '284 in view of the teachings of Japanese '725.

In reply thereto, Applicant would like to incorporate by reference his comments above concerning Applicant's invention and Japanese '725. In addition, Applicant has carefully reviewed U.S. '284 and respectfully submits that U.S. '284 discloses a method for producing koji mold for soy sauce, miso and sake and therefore has the problem associated therewith as discussed at page 6, lines 11 through 18 of

Applicant's application. Still further, Japanese '284 does not teach, show or suggest hydrolyzing the resultant from the koji inoculation. Still further, Applicant respectfully submits that U.S. '284 does not teach the production of a beneficial microorganism propagation promoting material that helps to sustain the health of living beings.

In view of the above, therefore, Applicant respectfully submits that the combination of U.S. '284 and Japanese '725 is not Applicant's invention.

Next, the Examiner rejects claims 1-8 under 35 U.S.C. 103 as being obvious over U.S. '284 in view of Japanese '725, Japanese '686, Remington and Merck, stating that U.S. '284 and Japanese '725 disclose the material except for the incorporation of starch into the final material; Remington or Merck teach starch as an inert absorbent for pharmaceutical preparations or suitable for food industry and it would therefore be obvious to utilize starch in U.S. '284 or Japanese '725 as taught by Remington or Merck; Japanese '686 discloses a material obtained from grains fermented with koji mold is useful for promoting growth of lactic acid during fermentation; and it would therefore be obvious to one of ordinary skill in the art to use a product obtained after grain fermentation with koji molds for proliferation of lactic bacteria.

In reply thereto, Applicant would like to incorporate by reference his comments above concerning Japanese '725, U.S. '284 and Applicant's invention. Still further, Applicant respectfully submits that while Remington or Merck may teach utilizing starch as a food additive, Applicant respectfully submits that neither Remington nor Merck suggests that one would add starch to hydrolyze resultant of Applicant's invention which is a material for promoting beneficial microorganism propagation which helps to sustain the health of living beings.

Still further, Applicant's review of Japanese '686 indicates that it does not disclose or suggest the removal of phytic acid and further suggests that the quantity of water to be added is 2 to 6 times that of the material.

In view of the above, therefore, Applicant respectfully submits that not only is the combination suggested by the Examiner not Applicant's invention, but also the combination suggested by the Examiner is not suggested by the art. Accordingly, Applicant respectfully submits that claims 1-8 are not obvious over U.S. '284 in view of Japanese '725, Japanese '686, Remington and Merck.

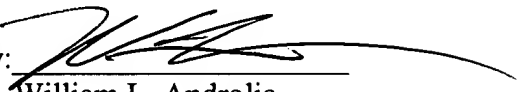
Applicant further respectfully and retroactively requests a three-month extension of time to respond to the Office Action and enclosed herewith is a check in the sum of \$870.

In view of the above, therefore, it is respectfully requested that this Amendment be entered, favorably considered and the case passed to issue.

Please charge any additional costs incurred by or in order to implement this Amendment or required by any requests for extensions of time to KODA & ANDROLIA DEPOSIT ACCOUNT NO. 11-1445.


Respectfully submitted,

KODA & ANDROLIA

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